

REMARKS/ARGUMENTS

In view of the following remarks, favorable reconsideration of the pending claims is respectfully requested.

Status of the Claims

Claims 1, 6 – 14, and 20 – 28 are currently pending.

Prior Art Rejections

Claims 1, 7 – 9, 11 – 12 and 26 have been rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,112,925 to Nahill et al. Claims 1, 6, 12 – 14, 20 – 25, and 27 – 28 have been rejected under 35 U.S.C. § 103(a) as being obvious over U.S. Design Patent No. 479690 to DeGroff. and U.S. Patent No. 5,514,392 to Garwood. Claims 10 has been rejected under 35 U.S.C. § 103(a) as being obvious over DeGroff, Garwood, and U.S. Patent No. 4,112,124 to Jarvis.

In maintaining the rejections, the Office Action is asserting that the trough profile represented by reference number 60 in Nahill extends from one end to the other end of the container. Similarly with DeGroff, the Office Action is interpreting the rectangular area which represents the undulating profile to run the length of the container of DeGroff and therefore DeGroff allegedly teaches the recitation that the flat portion and said trough extend from one end to said other end. Applicant respectfully disagrees with these assertions.

Contrary to the assertions in the Office Action, it is clear that the portions of the containers of Nahill and DeGroff relied on by the Office do not extend from one end to the other end. In both cases, the portion of the structures relied on by the Office do not approach either end of the containers, but rather, are confined towards the middle section of each of the containers. In contrast to the cited references, Claim 1 recites that “one end of said body portion being closed and the other end of said body portion having an open mouth, wherein said flat portion and said trough extend from said one end to said other end” (Emphasis Added). It is clear from the plain language of Claim 1, that the flat portion extends from the closed end to the end having the open mouth. Such a structure is simply not disclosed or suggested by the cited references. As discussed in greater detail below, the allegedly trough and flat portion in either of

Nahill or DeGroff fall significantly short of reaching either the closed end of the container or the open mouth of the containers. As such, the references, whether considered individually or in combination fail to disclose or suggest a container having a flat portion and a trough portion that extend from a closed end to an end having an open mouth as required by independent Claim 1.

Nahill, which is directed to a beverage container, includes a shoulder portion 48 that slopes inwardly towards an open mouth. The container includes a plurality of scribe lines 60 that are spaced around the circumference of the container. Each scribe line includes an upper and lower ends 63, 64. As can be clearly seen in FIG. 5, the upper end 63 does not approach the open end 45 of the container, but rather, is positioned at the shoulder portion 48 of the container.

As such, the scribe line does not extend to the open mouth 45 of the container. Any assertion to the contrary is clearly not supported by the teachings of Nahill. Similarly, the lower end 64 of the scribe line does not extend or reach to the closed end 52 of the container. Accordingly, Nahill does not disclose or suggest a container having a rectangular shaped flat portion and an undulating profile that extend from said one end of container (i.e., closed end) to said other end (i.e., end having open mouth) as required by Claim 1.

Similarly, the container of DeGroff also does not disclose or suggest a container having a rectangular shaped flat portion and an undulating profile that extend from said one end of container (i.e., closed end) to said other end (i.e., end having open mouth). DeGroff is directed to a container having a closed end (identified by the Office Action as End 2) and an open end (identified by the Office Action as End 2). In the central portion of the body, the container of DeGroff includes a molded shape that the Office Action alleges to teach the rectangular shaped flat portion and undulating profile. However, it is clear from FIGS. 2 and 4, that this molded shape does not extend between End 1 and End 2, but is rather constrained to a central portion of the container. As such, DeGroff fails to disclose or suggest a container having a rectangular shaped flat portion and an undulating profile that extend from said one end of container to the other end.

Garwood and Jarvis also fail to disclose such a structure so the combination of DeGroff with any one of these references also fails to disclose or suggest the claimed invention.

In view of the foregoing discussion, it can be clearly seen that none of the cited references disclose or suggest such a container having a flat portion and trough that extend from opposite ends of the container. Accordingly, the claimed invention is patentable over the cited references, whether considered individually or in combination.

Further, dependent Claim 28 recites that the open mouth has a cross-section that is substantially equal to that of said tubular body portion. This also is not disclosed or suggested by the container of Nahill. In contrast, Nahill describes a container having a mouth with a cross section that is significantly smaller than the cross-section of the tubular body portion. Hence, the presence of the shoulder portion 48. DeGroff also fails to disclose or suggest the recitation of Claim 28. In particular, a review of FIG. 2 of DeGroff clearly shows that the cross-section of the container's opening (i.e., mouth) is significantly smaller than the cross-section of the body portion. Thus, DeGroff fails to disclose or suggest this element of Claim 28. Accordingly, the cited references, whether considered individually or in combination fail to disclose or suggest the container of Claim 28.

In view of the foregoing amendments and remarks, it is respectfully submitted that the rejections under 35 U.S.C. § 102(b) and 103(a) have been overcome, and that the claims are in condition for immediate allowance.

CONCLUSIONS

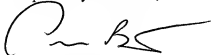
In view of the remarks presented above, Applicant submits that all of the pending claims are allowable and the present application is in condition for allowance. As such, the issuance of a Notice of Allowance is therefore respectfully requested. In order to expedite the examination of the present application, the Examiner is encouraged to contact Applicant's undersigned attorney in order to resolve any remaining issues.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required

Appl. No.: 10/817,303
Amdt. dated 01/05/2009
Reply to Office Action of 10/20/2008

therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit
Account No. 16-0605.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Timothy J. Balts', with a stylized flourish at the end.

Timothy J. Balts
Registration No. 51,429

Customer No. 00826
ALSTON & BIRD LLP
Bank of America Plaza
101 South Tryon Street, Suite 4000
Charlotte, NC 28280-4000
Tel Charlotte Office (704) 444-1000
Fax Charlotte Office (704) 444-1111
LEGAL02/31005253v1

ELECTRONICALLY FILED USING THE EFS-WEB ELECTRONIC FILING SYSTEM OF THE UNITED STATES PATENT &
TRADEMARK OFFICE ON January 5, 2009.